

SERVICE DATE - OCTOBER 22, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-68 (Sub-No. 4X)

LAKE SUPERIOR & ISHPEMING RAILROAD COMPANY—ABANDONMENT  
EXEMPTION—IN MARQUETTE COUNTY, MI<sup>1</sup>

Decided: October 20, 2004

This decision grants a petition filed by Lake Superior & Ishpeming Railroad Company (LS&I or petitioner) for reconsideration of a Board decision rejecting a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903.

BACKGROUND

On May 11, 2004, LS&I filed a petition seeking an exemption to abandon a line of railroad known as the Republic Subdivision, extending from milepost 69.52 (LS&I Jct.) near Negaunee, MI, to milepost 94.5 (Republic Mine), near Republic, MI, a distance of 24.98 miles in Marquette County, MI. The Subdivision is comprised of three segments: (1) segment one, extending from LS&I Jct. (milepost 69.52) west approximately 4.1 miles to Landing Jct. (milepost 73.6); (2) segment two, extending from Landing Jct. west approximately 12 miles to Humboldt Jct. (milepost 85.6); and (3) segment three, extending from Humboldt Jct. south approximately 8.9 miles to the end of track at Republic Mine (milepost 94.5).

In its petition for exemption, LS&I indicated that it owns a one-third interest and Canadian National Railway Company (CN) owns a two-thirds interest in the first segment. LS&I stated that, as per the parties' agreement, if petitioner were to abandon its use of the track, and CN desired to continue to use the track, CN would have to purchase LS&I's one-third interest. LS&I indicated that CN had not formally notified LS&I of its intentions.

LS&I further stated that it wholly owned the second and third segments, with CN holding trackage rights authority over the second segment. As to that segment, LS&I pointed out that the parties' trackage rights agreement expressly reserves to LS&I the right to abandon the segment, subject to a CN option to purchase it. LS&I stated that it had not received any response from CN regarding the proposed abandonment of the second segment.

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<sup>1</sup> Initially, a reference to "discontinuance of service" was included in the title of this proceeding. The revised title reflects a revision to the scope of the sought exemption authority, as subsequently discussed.

By decision served May 26, 2004, the Board's Director of the Office of Proceedings rejected the petition in its entirety. Because CN holds the majority interest in the first segment, the Director concluded that CN's absence as a party here meant that the agency could not process the abandonment authorization request as to that segment. And because petitioner sought abandonment authority for the entire 24.98 miles of railroad (all three segments), he further concluded that the request could not be processed as filed.

On June 15, 2004, LS&I filed a petition for reconsideration and for further relief on grounds of: (1) material error, and (2) changed circumstances. Regarding the former, LS&I argues that the Board committed material error by not acting on LS&I's alternative request for a discontinuance of service exemption as to the first segment, and by rejecting the exemption petition in its entirety. According to LS&I, the Board could have and should have processed segment one as a discontinuance exemption and the other segments as abandonment exemptions. Petitioner claims that the Board, in failing to take such action, improperly elevated form over substance.

LS&I further asserts that circumstances have changed in an important way since the filing of its petition. According to petitioner, CN has now advised it that CN would like additional time to pursue a possible alternative to purchasing the second segment. LS&I states that CN is seeking an arrangement with a short line carrier now operating in the area that would provide an alternative route for the overhead traffic that CN is now handling on this segment. LS&I indicates that it has advised CN that it is willing to defer temporarily its abandonment of this segment in exchange for CN's commitment to evaluate the alternatives that are available to it and to notify LS&I within a reasonable time how it desires to proceed. LS&I asserts that these changed circumstances lend further support for its petition for reconsideration.

Consistent with the accommodation that has been reached with CN, petitioner seeks vacation of the May 26 decision, reinstatement of its petition for exemption, and permission to withdraw its abandonment exemption request pertaining to segments one and two of the Republic Subdivision.<sup>2</sup> LS&I requests that we publish notice in the Federal Register of its revised petition for exemption, and grant exemption authority to abandon segment three.

## DISCUSSION AND CONCLUSIONS

We find that reconsideration is warranted on grounds of changed circumstances. We find no merit to petitioner's assertion that the agency committed material error in rejecting the petition for exemption in its entirety. The Director correctly concluded that serious deficiencies

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<sup>2</sup> LS&I states that, in light of its decision to defer abandonment of segment two, it does not want to proceed at this time with discontinuance of service on segment one.

in LS&I's segment one request, in particular that LS&I was only a one-third owner of the first segment of the line, prevented Board processing of LS&I's request to abandon the entire line of railroad. Petitioner has, however, demonstrated changed circumstances. LS&I and CN have reached an accommodation, LS&I seeks to withdraw two-thirds of its petition, and LS&I seeks to abandon only the third segment of the line. We will therefore grant the relief the petitioner seeks.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for reconsideration is granted.
2. The decision served on May 26, 2004, is vacated.
3. The petition for exemption is reinstated and accepted for filing, with the official filing date being the service date of this decision.
4. LS&I's request for leave to withdraw its request for exemption authority as to segments one and two is granted.
5. Notice of the petition for an exemption to abandon segment three will be published in the Federal Register within 20 days from the service date of this decision.
6. This decision is effective on its service date.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams  
Secretary